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7 *Attorneys for the Official Committee of Equity  
 Security Holders of USA Capital Diversified Trust  
 Deed Fund, LLC*

## 9 UNITED STATES BANKRUPTCY COURT

### 10 DISTRICT OF NEVADA

11	In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.	Case No. BK-S-06-10725 LBR Case No. BK-S-06-10726 LBR Case No. BK-S-06-10727 LBR Case No. BK-S-06-10728 LBR Case No. BK-S-06-10729 LBR
12	In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.	Chapter 11
13	In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.	Jointly Administered Under Case No. BK-S-06-10725-LBR
14	In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.	<b>OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, TO WRONG DEBTOR CLAIMS MISFILED AGAINST USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC</b>
15	In re: USA SECURITIES, LLC, Debtor.	Date: January 3, 2007 Time: 9:30 a.m. Courtroom: 1
16	Affects: <input type="checkbox"/> All Debtors <input type="checkbox"/> USA Commercial Mortgage Company <input type="checkbox"/> USA Securities, LLC <input type="checkbox"/> USA Capital Realty Advisors, LLC <input checked="" type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC <input type="checkbox"/> USA First Trust Deed Fund, LLC	
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27           The Official Committee of Equity Security Holders of USA Capital Diversified Trust  
 28 Deed Fund, LLC (the "Diversified Committee"), by and through its counsel, Orrick, Herrington

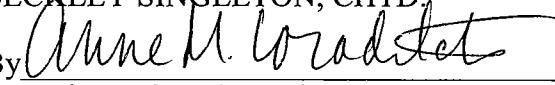
1 Sutcliffe LLP, and Beckley Singleton, Chtd., hereby submits this Omnibus Objection of the  
 2 Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund,  
 3 LLC To Wrong Debtor Claims Misfiled Against USA Capital Diversified Trust Deed Fund,  
 4 LLC (the "Objection"). This Objection is based upon the grounds that the proofs of claim  
 5 described herein and on Exhibit 1, attached hereto and made a part hereof, have been  
 6 erroneously filed against debtor USA Capital Diversified Trust Deed Fund, LLC (the  
 7 "Diversified Fund") and that Diversified Fund has no liability on account of such misfiled  
 8 claims.

9 The Objection is made pursuant to Section 502 of chapter 11 of Title 11 of the United  
 10 States Code (as amended, the "Bankruptcy Code"), Rule 3007 of the Federal Rules of  
 11 Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 3007 of the Local Rules of Bankruptcy  
 12 Practice (the "Local Rules"), the points and authorities contained herein, the pleadings and  
 13 papers on file with the Court, and any argument of counsel the Court may wish to entertain at  
 14 the hearing on this matter.

15 Based on the foregoing, the Diversified Committee requests that the Court enter an order  
 16 (i) sustaining the Objection; (ii) disallowing the claims described herein and on Exhibit 1, in  
 17 their entirety, as misfiled against the Diversified Fund; and (iii) granting such other and further  
 18 relief as the Court may deem just and proper.

19 Respectfully submitted this 30th day of November 2006.

20 BECKLEY SINGLETON, CHTD.

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 Deed Fund, LLC*

## **POINTS AND AUTHORITIES**

I.

## STATEMENT OF FACTS

## A. Background Information.

1. On April 13, 2006 (the “Petition Date”), USA Commercial Mortgage Company (“USACM”), USA Securities, LLC (“USA Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA First Trust Deed Fund, LLC (“FTDF”), and the Diversified Fund (collectively with USACM, USA Securities, USA Realty, and the FTDF, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. On May 9, 2006, the Court entered its Order Regarding Joint Administration Without Substantive Consolidation [Docket No. 184] linking the Chapter 11 Cases for joint administration under the USACM case name and number, BK-S-06-10725-LBR.

3. No trustee or examiner has been appointed in the Chapter 11 Cases, and Debtors continue to operate their businesses, if any, as debtors in possession, pursuant to Bankruptcy Code Sections 1107 and 1108.

4. On May 10, 2006, the Office of the United States Trustee (the "UST") appointed four separate committees, including the Diversified Committee, in the Chapter 11 Cases.

5. The Diversified Committee represents the interest of individuals who invested in the Diversified Fund (the “Diversified Fund Members”) and hold equity, or membership, interests in the Diversified Fund.

6. On June 15, 2006, pursuant to Bankruptcy Code Section 521(a)(1)(B), the Debtors filed their respective bankruptcy schedules and statements (the "Schedules") based upon their books and records as of the Petition Date.

7. On September 14, 2006, the Court entered its Order Setting Deadline to File Proofs of Claim and Proofs of Interest [Docket No. 1280] setting the deadline of November 13, 2006, to file proofs of claim in the Chapter 11 Cases.

8. On September 18, 2006, Debtors mailed proof of claim and proof of interest forms, together with instructions explaining that (i) if any equity interest holder (such as a

1 Diversified Fund Member) wished to assert a claim (as opposed to an equity interest) against  
 2 any of the Debtors, then that equity holder must file a proof of claim but that proofs of claim  
 3 should only be filed in those instances where the claimant believed one of the Debtors owed the  
 4 claimant monies for such things as damages, rescission, reimbursement or contribution; and (ii)  
 5 if the equity interest holder had no disagreement with the amount indicated on the proof of  
 6 interest form included in the mailing, then that equity interest holder need take no action and his  
 7 proof of interest in the Diversified Fund would be deemed allowed in the amount shown on the  
 8 proof of interest form.

9 **B. The Diversified Fund's Holdings.**

10 9. As of the Petition Date, USACM acted as the servicer for 115 separate loans (the  
 11 "Loans") having a combined outstanding loan balance of approximately \$962 million. See  
 12 Supplemental Declaration of Thomas J. Allison in support of Debtors' Motions [Docket No.  
 13 130], ¶ 2. All but three of the Loans were to have been secured by a deed of trust recorded  
 14 against commercial real property. Id., at ¶ 3.

15 10. According to the Debtors, there are an estimated 3,600 investors (the "Lenders")  
 16 whose names appear as lenders in the documents for one or more of the Loans. Id., at ¶ 5. The  
 17 Diversified Fund (together with the FTDF, the "Fund Lenders") is one such Lender.

18 11. As of the Petition Date, the Diversified Fund had an interest as a Lender in 23 of  
 19 the Loans (the "Diversified Fund Loans"). In the Diversified Fund Loans, the Diversified Fund  
 20 was the sole Lender in 7 and held only a fractional interest in the remaining 16 Loans. All of  
 21 the Diversified Fund Loans are serviced by USACM.

22 12. The Diversified Fund is owned by approximately 1,900 Diversified Fund  
 23 Members who hold membership interests in the Diversified Fund corporate entity. It is the  
 24 Diversified Fund entity, and not its owners, that is a Lender on the Diversified Fund Loans.  
 25 Likewise, it is the Diversified Fund's investments, and not those of the Diversified Fund  
 26 Members, that are secured – or should have been secured – by deeds of trust. The Diversified  
 27 Fund Members are only entitled to receive distributions from the Diversified Fund to the extent  
 28

1 the Diversified Fund has profits remaining after all of its expenses and valid claims have been  
 2 paid. Thus, the Diversified Fund Members own the Diversified Fund, not its investments.

3 **C. Analysis of Claims Filed Against the Diversified Fund.**

4 13. As of the date of this Objection, 137 proofs of claim have been filed against the  
 5 Diversified Fund. Counsel for the Diversified Committee analyzed each proof of claim filed  
 6 and determined that 21 of the claims filed are not claims against Diversified Fund (“Wrong  
 7 Debtor Claims”) but were filed by claimants who are not Diversified Fund Members but are  
 8 either members of the FTDF or are Lenders who invested directly into Loans (“Direct  
 9 Lenders”). A detailed listing of those Wrong Debtor Claims is attached hereto as **Exhibit 1** and  
 10 is incorporated herein by reference.

11 14. In analyzing the Wrong Debtor Claims, it is apparent that some claimants filed  
 12 claims on the basis of “Money Loaned” against the Diversified Fund and certain of the other  
 13 Debtors – and in many cases against each of the Debtors – in these Chapter 11 Cases,  
 14 irrespective of whether they have any connection to a particular Debtor. As such, those  
 15 claimants who filed claims against Diversified Fund on the basis of “Money Loaned,” but who  
 16 are not Diversified Fund Members, filed Wrong Debtor Claims against Diversified Fund on  
 17 account of an investment made through one of the other Debtors. Moreover, many of the  
 18 Wrong Debtor Claims were filed in duplicate.

19 15. In summary, the Diversified Fund has no liability for any of the Wrong Debtor  
 20 Claims, and all such claims should be disallowed in their entirety.

21 **II.**

22 **ARGUMENT**

23 Bankruptcy Code Section 502 authorizes a party in interest to object to claims. See 11  
 24 U.S.C. §502(a). Upon such objection, this Court, “after notice and a hearing, shall determine  
 25 the amount of such claim in lawful currency of the United States as of the date of the filing of  
 26 the petition . . . .” 11 U.S.C. § 502(b). Although a proper proof of claim is presumed valid  
 27 under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the creditor has  
 28 the ultimate burden of persuasion as to the validity and amount of the claim. Ashford v.

Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), aff'd, 91 F.3d 151 (9<sup>th</sup> Cir. 1996) (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

The Diversified Committee has analyzed the Wrong Debtor Claims and has determined that the Diversified Fund has no liability on account of any of the Wrong Debtor Claims because such claims were filed against Diversified Fund as the wrong debtor in these Chapter 11 Cases. In addition, many of the Wrong Debtor Claims were filed in duplicate, and such duplicate claims should not be allowed.

Accordingly, all of the Wrong Debtor Claims should be disallowed in their entirety.

III.

## NOTICE

This Objection will be served on (i) all of the claimants who filed the Wrong Debtor Claims at the addresses set forth on the claimants' respective proofs of claim, (ii) all parties on the Master Service List for Limited Notice #5 dated November 1, 2006 and (iii) all parties who have filed requests for special notice since the filing of such master service list. In light of the nature of the relief requested, the Diversified Committee submits that no further notice need be given.

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1 IV.  
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3 **CONCLUSION**  
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5 For the reasons set forth herein, the Diversified Committee respectfully requests that the  
6 Court enter an order (i) sustaining the Objection; (ii) disallowing, in their entirety, the Wrong  
7 Debtor Claims, as misfiled against the Diversified Fund; and (iii) granting such other and  
8 further relief as the Court deems just and proper.

9 Dated this 30th day of November 2006.  
10

11 BECKLEY SINGLETON, CHTD.  
12

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**EXHIBIT 1**  
**WRONG DEBTOR CLAIMS**

Claim No.	Claimant	Claim Amount	Comments	Proposed Disposition
6-1	Frieda Moon, Trustee of the Decedent's Trust	\$37,860.24	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Bay Pompano Beach, LLC	Disallow in its entirety
7-1	Frieda Moon, Trustee of the Decedent's Trust	\$51,033.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in HFAH-Clear Lake, LLC	Disallow in its entirety
8-1	Frieda Moon, and Sharon C. Van Ert	\$51,033.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Gramercy Court, Ltd.	Disallow in its entirety
9-1	Frieda Moon FBO Sharon C. Van Ert	\$35,583.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in FTDF	Disallow in its entirety
10-1	Frieda Moon FBO Sharon C. Van Ert	\$17,538.18	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in FTDF	Disallow in its entirety
11-1	Frieda Moon, and Sharon Van Ert	\$51,076.38	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Marlton Square thru FTDF	Disallow in its entirety
12-1	Frieda Moon, Trustee of the Decedent's Trust	\$51,076.38	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Castaic Partners III, LLC thru FTDF	Disallow in its entirety

Claim No.	Claimant	Claim Amount	Comments	Proposed Disposition
13-1	Frieda Moon, Trustee of the Decedent's Trust	\$25,538.20	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in BarUSA, LLC thru FTDF	Disallow in its entirety
14-1	Brenda Falvai	\$50,933.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Del Valle Capital Corporation thru FTDF	Disallow in its entirety
15-1	Brenda Falvai	\$50,972.22	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Glendale Tower Partners, LLC thru FTDF	Disallow in its entirety
16-1	Brenda Falvai	\$50,933.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Oak Shores II thru FTDF	Disallow in its entirety
17-1	Brenda Falvai	\$50,933.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Oak Shores II thru FTDF and duplicative of claim no. 16-1	Disallow in its entirety
18-1	Brenda Falvai	\$50,933.34	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Oak Shores II thru FTDF and duplicative of claim no. 16-1 and 17-1	Disallow in its entirety
19-1	Brenda Falvai	\$37,860.24	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Bay Pompano Beach	Disallow in its entirety

Claim No.	Claimant	Claim Amount	Comments	Proposed Disposition
37-1	Edward J. Quinn and Darlene A. Quinn	\$156,388.48	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on investments in Freeway 101, Gilroy, and Bay Pompano Beach	Disallow in its entirety
38-1	Edward J. Quinn and Darlene A. Quinn	\$156,388.48	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on investments in Freeway 101, Gilroy, and Bay Pompano Beach and duplicative of claim no. 37-1	Disallow in its entirety
53-1	Sandra O. Masters	\$425,000	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in 3685 San Fernando Road Partners	Disallow in its entirety
116-1	Nancy Brauer	\$25,000.00	Claimant is not a Diversified Fund Member nor otherwise connected to the Diversified Fund. Proof of claim provides no attached supporting documents	Disallow in its entirety
125-1	Law Offices of James J. Lee	\$200,000.00	Claimant is not a Diversified Fund Member nor otherwise connected to the Diversified Fund. Proof of claim appears to be based on a litigation entitled USA Commercial Mortgage v. James J. Lee, Esq., Case No. A459840, Law Offices of James J. Lee v. Kreg Rowe, et al., Case No. A473664, and U.S.A. Commercial Mortgage Company v James J. Lee, Esq., and Law Offices of James J. Lee, Case No. A488769 to which Diversified Fund is not a party	Disallow in its entirety

Claim No.	Claimant	Claim Amount	Comments	Proposed Disposition
126-1	James J. Lee, Esq.	\$200,000.00	Claimant is not a Diversified Fund Member nor otherwise connected to the Diversified Fund. Proof of claim appears to be based on a litigation entitled USA Commercial Mortgage v. James J. Lee, Esq., Case No. A459840, Law Offices of James J. Lee v. Kreg Rowe, et al., Case No. A473664, and U.S.A. Commercial Mortgage Company v James J. Lee, Esq., and Law Offices of James J. Lee, Case No. A488769 to which Diversified Fund is not a party; Claim is also duplicative of claim no. 125-1	Disallow in its entirety
132-1	William Chad Berry	\$200,000.00	Claimant is not a Diversified Fund Member nor otherwise connected to Diversified Fund. Proof of claim appears to be based on an investment in Meadow Creek Partners, LLC thru FTDF	Disallow in its entirety